

01-0-2007

AN ORDINANCE

BY COUNCIL MEMBERS VERN MCCARTY AND DERRICK BOAZMAN

Vern McCarty *Derrick Boazman* 01-0-
AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE HOUSING AUTHORITY OF THE CITY OF ATLANTA, GEORGIA (THE "AUTHORITY") AND THE CITY OF ATLANTA PERTAINING TO THE PERFORMANCE OF CERTAIN PUBLIC IMPROVEMENTS BY THE AUTHORITY FOR THE BENEFIT OF THE CITY OF ATLANTA; TRANSFERRING APPROPRIATIONS IN THE AMOUNT OF \$10,000,000 TO FUND A PORTION OF SAID PUBLIC IMPROVEMENTS; AND FOR OTHER PURPOSES.

WHEREAS, The Housing Authority of the City of Atlanta, Georgia (the "Authority") (together with its development partner, Carver Redevelopment, LLC, a Georgia limited liability company whose sole members are Integral Properties, LLC, a Georgia limited liability company (f/k/a The Integral Group, L.L.C.), and Russell New Urban Development, LLC, a Georgia limited liability company) is engaged in the revitalization of the Carver Homes public housing community into a new mixed-finance, mixed-income community (referred to herein sometimes as "Carver Homes"); and

WHEREAS, the revitalization includes the demolition of 990 distressed units (which has been completed) and the redevelopment of Carver Homes into a new community containing approximately 718 mixed-finance, mixed-income rental units and up to 252 homeownership units which will include 32 units reserved for public housing-eligible residents; and

WHEREAS, Phase I, containing 220 units with 110 units reserved for public housing-eligible families and another 44 units reserved for low-income families, is almost complete; and

WHEREAS, Phase II, containing 66 units with 33 units reserved for public housing-eligible families and another 7 units reserved for low-income families, will close in the first quarter of 2002; and

WHEREAS, Phase III, containing 216 units with 108 units reserved for public housing-eligible families and another 54 units reserved for low-income families, will close in December, 2001; and

WHEREAS, the revitalization will include an array of social and economic development services such as daycare, health services, counseling, educational training and recreational activities; and

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WHEREAS, the revitalization of this community is of enormous importance to the economic health of the City and the well-being of its residents; and

WHEREAS, the City owns, and has the responsibility for furnishing and performing certain public improvements, including landscaping, paving, curbs, gutters, streetscaping, sidewalks, lighting, streets, water, storm and sanitary sewer improvements in the public right-of-way (the "Carver Sewer Separation and Greenway Project") and necessary to support the revitalization of Carver Homes; and

WHEREAS, as part of the revitalization of Carver Homes, the City and the Authority have agreed that in order to support the development timetable set forth for the revitalization, the City has authorized the Authority to perform the public improvements to be known as the Carver Sewer Separation and Greenway Project; and

WHEREAS, the City and the Authority are working together to develop plans for the Carver Sewer Separation and Greenway Project Public Improvements necessitated by the revitalization of Carver Homes; and

WHEREAS, the City acknowledges that it would have had to perform the Carver Sewer Separation and Greenway Project Public Improvements but for the Authority's willingness to perform such work; and

WHEREAS, the City and the Authority have previously entered or will enter into a separate intergovernmental agreement for the City's contribution of \$10,000,000 for the cost of the Carver Sewer Separation and Greenway Project Public Improvements; and

WHEREAS, the City and the Authority acknowledge and agree that the most efficient and economical manner in which to perform the Carver Sewer Separation and Greenway Project Public Improvements is to have such work performed by the Authority or its contractors and to have the City contribute \$10,000,000 to the Authority for the costs incurred or to be incurred by the Authority in performing such work; and

WHEREAS, the City now wishes to make a contribution to the Authority for a portion of the cost of said improvements.

NOW, THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA AS FOLLOWS:

Section 1. The Mayor is authorized to enter into an intergovernmental agreement with the Authority for the construction of the Carver Sewer Separation and Greenway Project Public Improvements by the Authority for the use and benefit of the Authority and the City in an amount not to exceed \$10,000,000.

Section 2. That the 2001 (Water/Sewer) Budget be and is hereby amended as follows:

Transfer From Appropriations

_____ Reserve for Appropriations \$10,000,000

Transfer to Appropriations

_____ Carver Sewer Separation and Greenway Project \$10,000,000

Section 3. The City Attorney is authorized to prepare and review all necessary contractual agreements, and the Mayor is authorized to execute all necessary agreements after approval by the City Attorney as to form.

Section 4. Said agreements shall not be binding on the City until executed by the Mayor and delivered to the contracting party. §

Section 5. The Chief Financial Officer be and is hereby authorized to make payment for said contractual agreement from the appropriation accounts cited above in the aggregate amount not to exceed \$10,000,000.

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement (the "Agreement"), entered into as of the ____ day of _____, 2001, by and between **The Housing Authority of the City of Atlanta, Georgia** (herein called the "Authority") and the **City of Atlanta, Georgia** (herein called the "City").

RECITALS

WHEREAS, The Housing Authority of the City of Atlanta, Georgia (the "Authority") (together with its development partner, Carver Redevelopment, LLC, a Georgia limited liability company whose sole members are Integral Properties, LLC, a Georgia limited liability company (f/k/a The Integral Group, L.L.C.), and Russell New Urban Development, LLC, a Georgia limited liability company) is engaged in the revitalization of the Carver Homes public housing community into a new mixed-finance, mixed-income community (referred to herein sometimes as "Carver Homes"); and

WHEREAS, the revitalization includes the demolition of 990 distressed units (which has been completed) and the redevelopment of Carver Homes into a new community containing approximately 718 mixed-finance, mixed-income rental units and up to 252 homeownership units which will include 32 units reserved for public housing-eligible residents; and

WHEREAS, Phase I, containing 220 units with 110 units reserved for public housing-eligible families and another 44 units reserved for low-income families, is almost complete; and

WHEREAS, Phase II, containing 66 units with 33 units reserved for public housing-eligible families and another 7 units reserved for low-income families, will close in the first quarter of 2002; and

WHEREAS, Phase III, containing 216 units with 108 units reserved for public housing-eligible families and another 54 units reserved for low-income families, will close in December, 2001; and

WHEREAS, the revitalization will include an array of social and economic development services such as daycare, health services, counseling, educational training and recreational activities; and

WHEREAS, the revitalization of this community is of enormous importance to the economic health of the City and the well-being of its residents; and

WHEREAS, the City owns, and has the responsibility for performing certain public improvements, including landscaping, paving, curbs, gutters, streetscaping, sidewalks, lighting, streets, water and sanitary sewer improvements all in the public right-of-way (the "Carver Sewer Separation and Greenway Project"); and necessary to support the revitalization of Carver Homes;

and

WHEREAS, as part of the revitalization of Carver Homes, the City and the Authority have agreed that in order to support the development timetable set forth for the revitalization, the City has authorized the Authority to perform Phase II and Phase III Public Improvements to be known as the Carver Sewer Separation and Greenway Project Public Improvements; and

WHEREAS, the City and the Authority are working together to develop plans for the Carver Sewer Separation and Greenway Project Public Improvements necessitated by the revitalization of Carver Homes; and

WHEREAS, the City acknowledges that it would have had to perform the Carver Sewer Separation and Greenway Project Public Improvements work but for the Authority's willingness to perform such work; and

WHEREAS, the City and the Authority acknowledge and agree that the most efficient and economical manner in which to perform the Carver Sewer Separation and Greenway Project Public Improvements is to have such work performed by the Authority or its contractors and to have the City contribute \$10,000,000 to the Authority for the costs incurred or to be incurred by the Authority in performing such work; and

WHEREAS, the City now wishes to make a contribution to the Authority for a portion of the cost of improvements; and

WHEREAS, subject to the terms and conditions set forth herein, the City and the Authority have agreed that the Authority would perform the Carver Sewer Separation and Greenway Project Public Improvements on behalf of the City, and the City desires to accept such offer and contribute the funds to the Authority for the Carver Sewer Separation and Greenway Project Public Improvements.

NOW, THEREFORE, in consideration of ten dollars (\$10) and the mutual agreements and covenants hereinafter set forth and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto hereby agree as follows:

1. City Legislation and Funding. The City hereby acknowledges and agrees that pursuant to Ordinance No. 01-O-____, adopted by the City Council on _____ and approved by the Mayor on _____, that the Mayor is authorized to execute this Agreement. (Copy of Ordinance No. 01-O-____ attached).

2. Performance of Work; Inspection. The City hereby authorizes the Authority and its contractors and the Authority hereby agrees to perform or cause its contractors to perform the Carver Sewer Separation and Greenway Project Public Improvements work on behalf of the City.

The Authority shall cause an independent inspecting engineer to periodically inspect the Carver Sewer Separation and Greenway Project Public Improvements work and confirm that the relevant portion of the public improvements has been satisfactorily completed. The Authority shall cause a copy of such report to be delivered to the City's Department of Public Works. Upon completion of all of the Carver Sewer Separation and Greenway Project Public Improvements work, the Authority shall cause said inspecting engineer to deliver a final report which complies with the specifications required by the City's Department of Public Works to the City's Department of Public Works confirming that the Carver Sewer Separation and Greenway Project Public Improvements work was completed satisfactorily.

3. Contribution by the City.

a. Contribution. The City hereby agrees to contribute to the Authority an amount equal to \$10,000,000 (the "Contribution") for the cost of performing the Carver Sewer Separation and Greenway Project Public Improvements work. The City shall make such contribution as soon as practicable, but in no event later than February 6, 2002 (the "Commitment Date"). The City acknowledges that its commitment to provide sufficient funding for the public improvements required to support the revitalization of Carver Homes is clearly established in the letter dated November __, 2001 executed by DeWayne Martin, Chief Operating Officer.

b. Acknowledgment of Purpose of the Contribution. The City hereby acknowledges the purpose of the Contribution is to make a contribution to the Authority to pay the cost of performing the Carver Sewer Separation and Greenway Project Public Improvements work. The Authority will be performing such work on behalf of the City. The Authority has become financially obligated to contractors, and will be affected by deadlines concerning the construction of the Carver Sewer Separation and Greenway Project Public Improvements. If the Authority has not received the Contribution by the Commitment Date, then the Authority will be at risk for becoming liable for, or subject to liens, fines and penalties and other monetary damages in connection with unpaid construction costs incurred with respect to the Carver Sewer Separation and Greenway Project Public Improvements. Accordingly, the City agrees to indemnify and hold harmless the Authority from any damages, losses, expenses, liens, penalties or fines incurred or that are placed in existence by reason of the City's failure to provide fully and timely the Contribution to the Authority as provided in the above-paragraph.

c. Refund to the City. The Authority and the City hereby acknowledge that the cost of performing the Carver Sewer Separation and Greenway Project Public Improvements work may exceed \$10,000,000. The Authority and the City further acknowledge that the cost of public improvements for all phases is likely to exceed contributions from the City. Accordingly, the Authority and the City agree as follows: (1) the excess contribution on any phase will first be used to offset cost overruns on other phases, and (2) if the cost of the public improvements for all phases of the Carver Homes Redevelopment does not exceed the total contributions from the City for such public improvements, then the Authority shall refund to the City all unexpended

funds. The City acknowledges that it owns and has responsibility for furnishing and performing the Carver Sewer Separation and Greenway Project Public Improvements. The Authority is willing to perform the Carver Sewer Separation and Greenway Project Public Improvements under the terms and conditions of this Agreement.

4. Dedication of Public Improvements to City. The City and the Authority hereby acknowledge that the revitalization of Carver Homes is being accomplished in three or more phases. At such time as the revitalization of Carver Homes is complete, or at such earlier time as may be practicable given the construction schedule for the Carver Sewer Separation and Greenway Project Public Improvements, the Authority, as appropriate, shall cause the Carver Sewer Separation and Greenway Project Public Improvements work to be dedicated to the City, and the City shall accept such dedication, subject to the improvements being completed in accordance with City standards.

5. Miscellaneous.

a. Insurance. The Authority and its contractors shall maintain such property, casualty, fire, hazard and liability insurance as the City may reasonably require and on all such insurance policies, the City shall be named as an additional insured as its interests may appear. The Authority and the City hereby acknowledge that the cost of such insurance will be considered a cost of the Carver Sewer Separation and Greenway Project Public Improvements.

b. Indemnity. To the extent that the Authority is the beneficiary of any warranties, representations or indemnifications made by any contractor, subcontractor or supplier in connection with the Carver Sewer Separation and Greenway Project Public Improvements work, the Authority agrees to indemnify and hold harmless the City, its officers, agents and employees from any and all losses, expenses, demands and claims (collectively, "Losses") against the City, its officers, agents and employees sustained or alleged to have been sustained in connection with or as a result from the gross negligence or willful misconduct of the Authority in performing the Carver Sewer Separation and Greenway Project Public Improvements work; provided, that any claim for indemnification must be submitted to the Authority within thirty (30) days of the date on which the City's Department of Law becomes aware that a Loss is sustained or alleged to be sustained by the City. The City hereby agrees to cause the Department of Law to notify the Authority in the manner described in Section 5.f hereof on the date that the Department of Law becomes aware of a sustained or alleged Loss. The City hereby acknowledges that the Authority is acting as an Agent in this instance and agrees that the indemnification provided above is limited solely to the indemnification provided to the Authority by contractors, subcontractors or suppliers who perform such work. The parties agree that any indemnification or obligation to indemnify under this paragraph is expressly limited to any insurance proceeds received by the Authority from liability insurance required under this Agreement and to any amounts received by the Authority from contractors, subcontractors or suppliers as a result of warranties, representations and indemnifications. In the event it is determined that a Loss which was alleged to have been sustained by the City was not actually sustained, the City shall refund

any amounts paid to it by the Authority or on behalf of the Authority pursuant to this Section 5.b, to the Authority. This indemnification shall expire two years from the date of the completion of the Carver Sewer Separation and Greenway Project Public Improvements work.

c. Contract Budget. Funds of the contract budget may be shifted between line items of the Carver Sewer Separation and Greenway Project Public Improvements Budget with advance written approval by the City through the Commissioner of Public Works with the exception being water and sewer funds.

d. Monitoring Activities. The Authority agrees that the City may carry out inspection, monitoring, evaluation and auditing activities concerning the performance of the Carver Sewer Separation and Greenway Project Public Improvements work as the City deems reasonably necessary, provided that City gives reasonable advance notice to the Authority.

e. Records. The Authority and its contractors shall maintain such records and accounts related to the Carver Sewer Separation and Greenway Project Public Improvements work as are deemed reasonably necessary by the City, and the Authority, upon receipt of five business days prior written notice from the City, shall permit representatives of the City, at the City's sole cost and expense, to have full access to and the right to examine any books, documents, papers and records involving the performance of the Work during normal business hours at the Authority's central office. The Authority's obligation to maintain such records and accounts and the City's right to examine any books, records or other documents shall expire two years after the date of this Agreement.

f. Notices. Notices and reports described herein shall be delivered or sent to the parties as follows.

To the Authority:

Executive Director
The Housing Authority of the City of Atlanta, Georgia
230 John Wesley Dobbs Avenue, N.E.
Atlanta, Georgia 30303-2429
Fax: 404-332-0100
Tel: 404-817-7463

With a copy to:

General Counsel
Legal and Intergovernmental Affairs
The Housing Authority of the City of Atlanta, Georgia
230 John Wesley Dobbs Avenue, N.E.
Atlanta, Georgia 30303-2420
Fax: 404-332-0104
Tel: 404-817-7293

To the City:

Commissioner
Department of Public Works
68 Mitchell Street, S.W.
Suite 4700
Atlanta, Georgia 30335-0324
Fax: 404-658-7052
Tel: 404-630-6240

With a copy to:

Bernard R. Thomas, Esq.
Suite 4100, City Hall Tower
68 Mitchell Street, S.W.
Atlanta, Georgia 30335-0332
Fax: 404-658-6894
Tel: 404-330-6400

g. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or by reason of public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of these transactions contemplated hereby is not affected in any manner materially adverse to either party.

h. Entire Agreement; Amendment; Waiver; Counterparts. This Agreement constitutes the entire agreement between the parties; it supersedes any prior agreement or understandings between them, oral or written, with respect to the matters addressed herein, all of which are hereby canceled. This Agreement may not be amended or modified except by an instrument in writing signed by both parties hereto. Waiver of any term or condition of this Agreement shall be effective if in writing and shall not be construed as a waiver of any subsequent breach or waiver of the same term or condition, or a waiver of any other term or condition of this Agreement. This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the City and the Authority have executed this Agreement and caused their seals to be affixed and attested as of the day and year first above written.

THE HOUSING AUTHORITY OF
CITY OF ATLANTA, GEORGIA

By: _____ (SEAL)
Renée Lewis Glover
Executive Director

Attest:

Assistant Secretary

CITY OF ATLANTA, GEORGIA

By: _____ (SEAL)
Mayor

Attest:

Recommended:

Municipal Clerk

Chief Operating Officer

Approved as to Form:

Chief Financial Officer

City Attorney

Commissioner, Department of Public Works